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10/071,902	02/08/2002	Christopher B. Hewett	0320	2268

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EXAMINER

BUTLER, MICHAEL E

ART UNIT	PAPER NUMBER
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3653

NOTIFICATION DATE	DELIVERY MODE
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01/29/2008

ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

ADIPFDD@bipc.com
debra.hawkins@bipc.com

Office Action Summary

Application No.

10/071,902

Applicant(s)

HEWETT, CHRISTOPHER B.

Examiner

Michael Butler

Art Unit

3653

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 29 October 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 37-42, 44, 45 and 47-52 is/are pending in the application.
- 4a) Of the above claim(s) 44 and 45 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 37-42, and 47-52 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office Action, and apply to this and any subsequent Office Actions.

Drawings

1. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the hanging of the dispenser in a shower must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

- (a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.
- (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States
- (e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

3. Claims 37, 38, 42, 48, 49, 50, 51, and 52 are rejected under 35 U.S.C. 102(b) as being anticipated by Cole 3089586 which discloses all the claimed elements including:

Re: cl 37) A method of providing tissues in a shower stall comprising the steps of:

A) providing a body forming a tissue dispenser having a tissue dispenser section containing tissues to be dispensed and a disposal section for receiving used tissues, the tissue dispenser section being separated from the tissue disposal section by a wall and having a tissue dispensing orifice, the tissue disposal section having a tissue disposing orifice, a portion of the body defining the tissue disposal section being expandable from a collapsed state to enlarge the tissue disposal section, mounting the body [at the shower stall] above floor level (c2 L 5-11)

C) expanding the tissue disposal section to provide space for used tissues (c1 L 53-55 expanding from the folded position)

D) removing tissues through the tissue dispensing orifice (c2 L 1-4) in the same direction as the expansion (in fig 2 expansion is to the right as is the direction of tissue removal) ; and

E) inserting used tissues into the tissue disposal section through the tissue disposing orifice (c1 L 53-55)

(Re: cl 38) wherein the portion of the body defining the tissue disposal section includes a pleat extending completely around the periphery of the body; step C comprising expanding the pleat (16; c 1 L 56-58)

(Re: cl 42)(37) wherein step B comprises suspending an upper portion of the body by an elongated element (C2 L 7-11)

(Re: cl 48)(37) further including opening a portion of the body to expose the tissue disposal section and emptying the contents thereof (c2 L 1-4)

(Re: cl 49)(48) further including the step of opening another portion of the body to expose the tissue dispenser section and inserting fresh tissues therein (C1 L 47-53)

(Re: cl 50)(37) further including opening a portion of the body to expose the tissue dispenser section and inserting fresh tissues therein (c2 L 1-4)

(Re: cl 51)(50) which comprises opening a bottom portion of the body (c1 L 53-55)

(Re: cl 52)(37) further comprising opening a top portion of the body to expose the tissue disposal section and emptying the contents thereof(c2 L 1-4), and opening a bottom portion of the body to expose the tissue dispenser section and inserting fresh tissues therein (C1 L 47-53) .

4. Claims 37, 48, 49, 50, 51, and 52 are rejected under 35 U.S.C. 102(b) as being anticipated by Kaplan 3089597 which discloses all the claimed elements including:

Re: cl 37) A method of providing tissues in a shower stall comprising the steps of:

A) providing a body forming a tissue dispenser having a tissue dispenser section containing tissues to be dispensed and a disposal section for receiving used tissues, the tissue dispenser section being separated from the tissue disposal section by a wall and having a tissue dispensing orifice, the tissue disposal section having a tissue disposing orifice, a portion of the body defining the tissue disposal section being expandable from a collapsed state to enlarge the tissue disposal section (c4 L 11-15)

B) mounting the body above floor level (c2 L 29-30)

C) expanding the tissue disposal section to provide space for used tissues (c4 L 5-8) removing tissues through the tissue dispensing orifice in the same direction as the expansion (C3 L 69-75); and

E) inserting used tissues into the tissue disposal section through the tissue disposing orifice (c4 L 11-15)

(Re: cl 48)(37) further including opening a portion of the body to expose the tissue disposal section and emptying the contents thereof. (c4 L 11-15)

(Re: cl 49)(48) further including the step of opening another portion of the body to expose the tissue dispenser section and inserting fresh tissues therein (C3 L 69-75)

(Re: cl 50)(37) further including opening a portion of the body to expose the tissue dispenser section and inserting fresh tissues therein (C3 L 69-75)

(Re: cl 51)(50) which comprises opening a bottom portion of the body (C3 L 69-75).

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claim(s) 37-38 and 40-42 and 48-52 is/are rejected under 35 U.S.C. 103(a) as being unpatentable over Cole 3089586 in view of Schwimmer et al. 2841275 wherein the former discloses the elements previously discussed and further discloses:

Re: cl 37) A method of providing tissues in a shower stall comprising the steps of:

A) providing a body forming a tissue dispenser having a tissue dispenser section containing tissues to be dispensed and a disposal section for receiving used tissues, the tissue dispenser section being separated from the tissue disposal section by a wall and having a tissue dispensing orifice, the tissue disposal section having a tissue disposing orifice, a portion of the body defining the tissue disposal section being expandable from a collapsed state to enlarge the tissue disposal section, mounting the body above floor level (c2 L 5-11)

C) expanding the tissue disposal section to provide space for used tissues (c1 L 53-55 expanding from the folded position)

D) removing tissues through the tissue dispensing orifice (c2 L 1-4) in the same direction as the expansion (in fig 2 expansion is to the right as is the direction of tissue removal) ; and

E) inserting used tissues into the tissue disposal section through the tissue disposing orifice (c1 L 53-55)

(Re: cl 38) wherein the portion of the body defining the tissue disposal section includes a pleat extending completely around the periphery of the body; step C comprising expanding the pleat (16; c 1 L 56-58)

(Re: cl 42)(37) wherein step B comprises suspending an upper portion of the body by an elongated element (C2 L 7-11)

(Re: cl 48)(37) further including opening a portion of the body to expose the tissue disposal section and emptying the contents thereof (c2 L 1-4)

(Re: cl 49)(48) further including the step of opening another portion of the body to expose the tissue dispenser section and inserting fresh tissues therein (C1 L 47-53)

(Re: cl 50)(37) further including opening a portion of the body to expose the tissue dispenser section and inserting fresh tissues therein (c2 L 1-4)

(Re: cl 51)(50) which comprises opening a bottom portion of the body (c1 L 53-55)
(Re: cl 52)(37) further comprising opening a top portion of the body to expose the tissue disposal section and emptying the contents thereof(c2 L 1-4), and opening a bottom portion of the body to expose the tissue dispenser section and inserting fresh tissues therein (C1 L 47-53) .

The latter discloses any elements not inherently taught by the former including:

(Re: cl 40) wherein the expanding of the the tissue disposal section occurs in the direction of the a vertical direction (;c3 L 25-29)

It would have been obvious for Cole to dispense the tissues in a vertical direction to give tissues to persons located above the top of the dispenser as taught by Schwimmer et al. and come up with the instant invention.

7. Claim(s) 37, 38, 40-42, 47 ,48, 49, 50, 51, and 52 37-38 and 40-42 and 48-52 is/are rejected under 35 U.S.C. 103(a) as being unpatentable over Cole 3089586 in view of Yarn et al. 5375928 wherein the former discloses the elements previously discussed and further discloses:

Re: cl 37) A method of providing tissues in a shower stall comprising the steps of:

A) providing a body forming a tissue dispenser having a tissue dispenser section containing tissues to be dispensed and a disposal section for receiving used tissues, the tissue dispenser section being separated from the tissue disposal section by a wall and having a tissue dispensing orifice, the tissue disposal section having a tissue disposing orifice, a portion of the body defining the tissue disposal section being expandable from a collapsed state to enlarge the tissue disposal section, mounting the body above floor level (c2 L 5-11)

C) expanding the tissue disposal section to provide space for used tissues (c1 L 53-55 expanding from the folded positon)

D) removing tissues through the tissue dispensing orifice (c2 L 1-4) in the same direction as the expansion (in fig 2 expansion is to the right as is the direction of tissue removal) ; and

E) inserting used tissues into the tissue disposal section through the tissue disposing orifice (c1 L 53-55)

(Re: cl 38) wherein the portion of the body defining the tissue disposal section includes a pleat extending completely around the periphery of the body; step C comprising expanding the pleat (16; c 1 L 56-58)

(Re: cl 42)(37) wherein step B comprises suspending an upper portion of the body by an elongated element (C2 L 7-11)

(Re: cl 48)(37) further including opening a portion of the body to expose the tissue disposal section and emptying the contents thereof (c2 L 1-4)

(Re: cl 49)(48) further including the step of opening another portion of the body to

expose the tissue dispenser section and inserting fresh tissues therein (C1 L 47-53)
(Re: cl 50)(37) further including opening a portion of the body to expose the tissue dispenser section and inserting fresh tissues therein (c2 L 1-4)

(Re: cl 51)(50) which comprises opening a bottom portion of the body (c1 L 53-55)
(Re: cl 52)(37) further comprising opening a top portion of the body to expose the tissue disposal section and emptying the contents thereof(c2 L 1-4), and opening a bottom portion of the body to expose the tissue dispenser section and inserting fresh tissues therein (C1 L 47-53) .

The latter discloses any elements not inherently taught by the former including:

mounting the body above floor level (c1 L 9-34);

(Re: cl 40) wherein the dispensing of the tissue occurs in a vertical direction (c2 L 26-32 – expansion is in the same direction as the dispensing so expansion is vertical)

(Re: cl 47) (40) wherein the tissues are removed in a downward direction (c2 L 26-32).

It would have been obvious for Schwimmer et al. to suspend the dispenser above the floor using an elongated element to give users access to a dry-protected-cleaning tissues and wipes for localized cleaning and to give shower cleaners a cleaning tool in the shower suspended above the wet floor or tub and to keep tissues in a constantly accessible location and avoiding the need to bend down to the floor of table inaccessible as taught by Yarung et al. and come up with the instant invention. It would have been obvious for Schwimmer et al. dispense the tissues in a downward direction to give tissues to persons located below the hanging dispenser as taught by Yarung et al. and come up with the instant invention.

8. Claim(s) 37-42 and 47-52 is/are rejected under 35 U.S.C. 103(a) as being unpatentable over Schwimmer et al. 2841275 in view of Yarng et al. 5375928 wherein the former discloses the elements previously discussed and further discloses:

Re: cl 37) A method of providing tissues in a shower stall comprising the steps of:
A) providing a body forming a tissue dispenser having a tissue dispenser section containing tissues to be dispensed and a disposal section for receiving used tissues, the

tissue dispenser section being separated from the tissue disposal section by a wall and having a tissue dispensing orifice, the tissue disposal section having a tissue disposing orifice, a portion of the body defining the tissue disposal section being expandable from a collapsed state to enlarge the tissue disposal section, expanding the tissue disposal section to provide space for used tissues (c3 L 25-29)

D) removing tissues through the tissue dispensing orifice in the same direction as the expansion (c2 L 30-32); and

E) inserting used tissues into the tissue disposal section through the tissue disposing orifice (c3 L 29-31)

(Re: cl 38) wherein the portion of the body defining the tissue disposal section includes a pleat extending completely around the periphery of the body; step C comprising expanding the pleat (c3 L 25-29)

(Re: cl 39) wherein the portion of the body defining the tissue disposal section includes a plurality of the pleats arranged in accordion fashion, each pleat extending completely around the periphery of the body comprising periodically expanding the pleats as the tissue disposal section becomes full of used tissues (c3 L 25-29)

(Re: cl 40)(39) wherein the dispensing of the tissue disposal section occurs in the direction of the a vertical direction (c3 L 25-29)

The latter discloses any elements not inherently taught by the former including:

mounting the body above floor level (c1 L 9-34);

(Re: cl 40) wherein the dispensing of the tissue disposal section occurs in a vertical direction (c2 L 26-32- expansion is in the same direction as the dispensing so expansion is vertical)

(Re: cl 41) (40) wherein step B comprises suspending an upper portion of the body by an elongated element (c2 L 38-45)

(Re: cl 42)(37) wherein step B comprises suspending an upper portion of the body by an elongated element (c2 L 38-45)

(Re: cl 47) (40) wherein the tissues are removed in a downward direction (c2 L 26-32).

It would have been obvious for Schwimmer et al. to suspend the dispenser above the floor using an elongated element to give users access to a dry-protected-cleaning tissues and wipes for localized cleaning and to give shower cleaners a cleaning tool in the shower suspended above the wet floor or tub and to keep tissues in a constantly accessible location and avoiding the need to bend down to the floor of table inaccessible as taught by Yarung et al. and come up with

the instant invention. It would have been obvious for Schwimmer et al. dispense the tissues in a downward direction to give tissues to persons located below the hanging dispenser as taught by Yarung et al. and come up with the instant invention.

Response to Amendments/Arguments

9. Applicant's amendment was effective in overcoming the previous rejection.

Applicant's latent request to move claims 45 and 44 from group I to group II was unpersuasive. Applicant explicitly declared in his 1/12/2007 that the claims of elected group II were 37-42 on his election of 1/12/2007, with the Office relying upon such identification as applicant's final election. If applicant believed claims 44 and 45 belonged in group II, he should have presented an argument as to why those claims were patentably indistinct from the claims of group II before an action on the merits rather than withholding such argument till later to raise such an issue till after an action on the merits was issued. Notwithstanding the just discussed issued, amendments added subsequent to filing need support within the originally filed specification.

Conclusion

10. Applicant's amendment necessitated the new grounds for rejection. Accordingly, **THIS ACTION IS MADE FINAL**. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

11. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

12. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Exmr. Michael E. Butler whose telephone number is (571) 272-6937.


If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Patrick Mackey, can be reached on (571) 272-6916. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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me/k
1/19/08


PATRICK MACKAY
SUPERVISOR
TECHNOLOGY CENTER 3600